

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>IN RE:</b>	)	
<b>BANGOR &amp; AROOSTOOK</b>	)	Chapter 11
<b>RAILROAD COMPANY,</b>	)	Bankr. Case No. 01-11565
	)	
<b>DEBTOR</b>	)	
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<b>BNSF RAILWAY COMPANY,</b>	)	
	)	
<b>APPELLANT</b>	)	Adversary Proceeding
	)	Bankr. No. 03-1205
<b>v.</b>	)	
	)	<b>CIVIL No. 06-141-B-H</b>
<b>JAMES E. HOWARD, Chapter 11</b>	)	
<i>Trustee of Bangor &amp; Aroostook</i>	)	
<i>Railroad Company,</i>	)	
	)	
<b>APPELLEE</b>	)	

**ORDER ON APPEAL**

Oral argument on this appeal was held on February 22, 2007. I recognize that there are strong arguments on both sides of the primary issue. Indeed, there appears to be a Circuit split on the issue (7th vs. 3d and 6th). See In re Iowa R.R. Co., 840 F.2d 535 (7th Cir. 1988); In re Penn. Cent. Transp. Co., 486 F.2d 519 (3d Cir. 1973); Missouri Pacific Rail Co. v. Escanaba & Lake Superior R.R. Co., 897 F.2d 210 (6th Cir. 1990). Undoubtedly, therefore, this appeal is heading to the First Circuit and, in light of the apparent Circuit split, perhaps to the Supreme Court. But I conclude that Judge Haines' well-written opinion is

faithful to existing First Circuit precedent, namely In re Morales Travel Agency, 667 F.2d 1069 (1st Cir. 1980). Under any standard of review, I **AFFIRM** Judge Haines on this and the other issues in this appeal.

**So ORDERED.**

**DATED THIS 23RD DAY OF FEBRUARY, 2007**

/s/D. BROCK HORNBY

**D. BROCK HORNBY**  
**UNITED STATES DISTRICT JUDGE**